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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,107	10/24/2003	Jeffrey D. Sutherland		4835

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EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,107

Applicant(s)

SUTHERLAND ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005 and 09 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is the second office action for application number 10/695,107, Carrier for Various-Sized Articles Operatively Supported by a Vehicle, filed on October 24, 2003.

Drawings

The drawings were received on May 2, 2005. These drawings are approved.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the one or more handles being collapsible is not shown in the drawings nor described in the specification.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Publication 19936653 to Fleck in view of U.S. Patent 5,881,477 to Watson. Fleck an apparatus (10) for supporting an article (2) on a vehicle surface (3) during

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transport with a vehicle, the apparatus comprising: one or more straps (5, 9); a planar platform (4) having a body and cooperating with the one or more straps for holding the article against the platform, the platform further comprising a planar top surface (4a), a planar bottom surface (4b) parallel to the top surface, a bearing member (space between slots 6), a plurality of slots (6) separating the bearing member; at least one recess (24), aligned with the slots and bearing member, recessing from the bottom surface into the body of the platform; wherein the one or more straps are removable from the platform; wherein the one or more straps vary in width and length according to the size of the article to be supported; and one or more handles (11) attached to the body of the platform.

Fleck discloses the claimed invention except for the limitations of a plurality of bearing members. Watson teaches a planar platform (12) having a one or more straps (28, 57, 50), the planar platform having a body, a planar top surface, a planar bottom surface, a plurality of bearing members arranged in succession to enable adjustment of the one or more straps, and a plurality of slots (18) separating the bearing members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the number of bearing members and slots in Fleck to have included the number of bearing members and slots as taught by Watson for the purpose of increasing the adjustability of the apparatus to accommodate a variety of articles.

Fleck further discloses slip-resistant wedges (17) and feet (21). Fleck combined with Watson disclose the claimed invention except for the limitations of the one or more straps being permanently fastened to the platform; one or more handles being formed into the platform; and wherein the top and bottom surfaces are slip resistant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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have modified the straps in Fleck to have been permanently attached to the platform and to have formed the handles into the platform, since such modifications would have merely involved making a separable item integral and would not have produced any unexpected results. It would have been obvious to one having ordinary skill in the art at the time the invention was made constructed the platform of slip resistant material for the purpose of preventing unwanted slippage of the articles relative to the platform and the platform relative to the supporting surface.

Response to Arguments

Applicant's arguments filed February 9, 2005 have been fully considered but they are not persuasive. A new rejection has been applied to claims 1-6 and 9.

In response to applicant's argument that Fleck only supports cylindrical containers, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

In regards to applicant's argument that Fleck does not disclose a planar top surface and a planar bottom surface, the planar top surface (4a) in Fleck includes wedges that are not formed integrally with the top planar surface, these wedges appear to be

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removable so that the apparatus can accommodate different objects. The knobs or feet on the bottom surface of the apparatus appear to be removable and thus are not needed to support the apparatus on a surface.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,855,198 to King

U.S. Patent 3,502,316 to Saether

U.S. Patent Application Publication 2004/0182899 to Deutchman

King discloses a platform (Fig. 3) having a plurality of slots for receiving a strap. Saether discloses an elastomeric platform and support. Deutchman discloses a caddy for use with a mobile vehicle.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

July 25, 2005